



The Mersey Docks and Harbour Company Limited
Maritime Centre, Port of Liverpool, L21 1LA

PORT OF LIVERPOOL CONTAINER SERVICES

GENERAL TERMS AND CONDITIONS

**IN RESPECT OF CONTAINER AND EQUIPMENT REPAIR SERVICES
OPERATED OUT OF ROYAL SEAFORTH CONTAINER
TERMINAL, PORT OF LIVERPOOL**

August 2018

Liverpool

1. **Definitions**

1.1 In these Terms and Conditions:

“**Additional Services**” means any services which PLCS may agree in writing to perform which are not included in the Services;

“**Booking**” means an agreement confirmed in writing whereby PLCS agrees to perform any of the Services or Additional Services;

“**Charges**” means the amounts charged or to be charged from time to time by PLCS in accordance with a quotation, or otherwise in accordance with the Tariff or as otherwise agreed with the Owner in writing;

“**Container**” means any standard 20’ 30’ 40 and 45’ ISO containers (excluding reefer and tank containers), and any such other similar containers or equipment;

“**Data Protection Legislation**” means all applicable data protection and privacy legislation, regulations and guidance including, without limitation the Data Protection Act 2018, the GDPR (Regulation (EU) 2016/679) (as amended or re-enacted from time to time and including any replacement or subordinate legislation). Terms in this agreement shall, so far as the context permits and unless otherwise stated, have the meanings given to them in the Data Protection Legislation.

“**PLCS**” means Port of Liverpool Container Services, a trading division of The Mersey Docks and Harbour Company Limited whose registered office is situated at Maritime Centre, Port of Liverpool, Liverpool L21 1LA;

“**Insolvency Events**” means liquidation, administration, receivership, application for creditor protection, suspension of payments, or other similar insolvency process or proceedings;

“**Line Stock**” means the area of RSCT where an applicable shipping line’s stock of containers is located;

“**Owner**” means the owner, lessor, lessee, bailor, bailee or the respective agents thereof of any Container handled by PLCS, or any shipping line, vessel owner, charterer or other recipient of the Services, and shall include the party making a Booking;

“**Repair Facility**” means the designated area within RSCT operated by PLCS;

“**RSCT**” means Royal Seaforth Container Terminal

“**Services**” means the operations or services performed by PLCS and referred to in Clause 5;

“Special Conditions” means any agreement or special terms concluded between PLCS and an Owner which are separate from or ancillary to these Terms and Conditions;

“Tariff” means such applicable rates for the Services as PLCS shall specify from time to time or as may be applicable at the time of a Booking.

- 1.2 The headings to clauses are for ease of reference only and shall not affect the interpretation thereof.
- 1.3 Unless the context otherwise requires, the singular shall include the plural and vice versa.
- 1.4 References to clauses are references to the clause of these Terms and Conditions unless otherwise stated.

2. **Notice**

The performance of the Services by PLCS shall be deemed to constitute notice of and agreement to these Terms and Conditions, provided that PLCS shall have taken all reasonable steps to ensure that the Owner is aware of these Terms and Conditions and that copies are available on request.

3. **Application**

These Terms and Conditions shall be applicable during such time as the Services are being performed by PLCS.

4. **Warranty of Authority**

Any party making a Booking with PLCS, or any party arranging delivery of the Container to PLCS, warrants that it has the full requisite authority of the Owner to contract for the Services pursuant to these Terms and Conditions.

5. **Services**

- 5.1 PLCS is able (subject to resource and storage space) to perform the following services for Containers:
 - (i) minor temporary and permanent repairs (e.g. re-sealing, patch repairs);

- (ii) major repairs (subject to agreement);
- (iii) arranging transport (forklift) of Containers to/from the Repair Facility ;
- (iv) nesting flat rack equipment;
- (v) servicing, steam cleaning and washing;
- (vi) condition surveys and reporting thereon ;
- (vii) such other services as may be agreed between the Owner and PLCS from time to time.

5.2 The Services also include mobile repair services (e.g. minor repairs to equipment and fittings e.g. ladders, doors, tank tops) to vessels situated within the Port of Liverpool and in reasonable proximity thereto (e.g. Manchester Ship Canal).

5.3 PLCS will carry out the Services with reasonable skill and care.

5.4 In relation to servicing and repairs, subject to contrary instructions received by the Owner, PLCS will use reasonable endeavours to use manufacturers' spare parts.

6. **Manning and Performance**

6.1 Subject to these Terms and Conditions PLCS will provide such security, supervision, labour, plant and equipment for the performance of the Services as in its discretion it considers adequate.

6.2 PLCS shall perform or provide such of the Services as in its reasonable discretion considers appropriate and expedient unless instructed to the contrary in writing by the Owner, and in accordance with the normal working practices of PLCS from time to time, which may be altered without prior notice.

6.3 PLCS shall be entitled to refuse to provide the Services if:

- (a) PLCS has not been presented with the correct information and documentation in relation thereto;
- (b) the Container is not empty (and to the extent the Services are permitted to be performed on any laden container PLCS shall have no liability whatsoever to loss or damage to contents arising therefrom) ;
- (c) the Container is dangerous or incorrectly labelled.

7. **General Procedures**

- 7.1 As required by the Owner, PLCS will take delivery at the Repair Facility of any Containers suspected of damage or defects.
- 7.2 A 360° inspection will be performed and PLCS will advise the Owner of the results thereof, as appropriate with accompanying photographs of any damage or defects.
- 7.3 PLCS will send the Owner a repair/service quotation for agreement.
- 7.4 Once a repair/service quotation has been approved, PLCS will proceed with repair as soon as reasonably practicable but without guarantee as to timescale, and thereafter will arrange return of the repaired or serviced Container to Line Stock.
- 7.5 The above procedures in clauses 7.1 to 7.4 may be changed without notice to the Owner and to suit the operational requirements, manpower, plant and storage limitations of PLCS from time to time.

8. **Operating Hours**

- 8.1 PLCS's general hours of operation are from 08.00 hours to 17.00 hours Monday to Friday only.
- 8.2 Services that are performed outside general hours are discretionary and may be subject to PLCS charging an overtime premium in accordance with the Tariff.

9. **Quotations**

- 9.1 Quotations for Services or Additional Services may be withdrawn at any time before acceptance and are subject to variation in accordance with any changes in the price of materials, consumables, parts and labour.
- 9.2 Quotations will automatically lapse if not accepted within a period of 30 days of the quotation date, but may be reinstated at the option of PLCS.
- 9.3 Transport costs unless otherwise stated are in addition to the quoted charges and as applicable (e.g. moves of Containers within RSCT) will be charged separately by the terminal operator.
- 9.4 Unless otherwise stated, VAT and/or other applicable taxes shall be added to the quoted charges.

10. **Charges**

- 10.1 The Owner shall be responsible for payment of all Charges.
- 10.2 PLCS will invoice the Charges as often as it considers appropriate, in accordance with the Tariff and/or quotations accepted by the Owner.
- 10.3 Payment terms unless otherwise stated are 28 days and Charges shall be paid without discount, counterclaim or set-off.
- 10.4 Interest on unpaid Charges after the invoice due date shall run at 8% p.a. or such higher rate of interest as may be applicable pursuant to Late Payment of Commercial Debts (Interest) Act 1998 and shall be compounded at monthly intervals.
- 10.5 PLCS may in its discretion require the Owner to pay all or part of the Charges before the Services are commenced or to provide other appropriate security.
- 10.6 Notwithstanding anything else in this clause 10, any invoice rendered by PLCS shall become immediately due and payable as soon as an Insolvency Event occurs, or if the Owner fails to comply with any legitimate demand pursuant to these Terms and Conditions.

11. **Lien**

PLCS shall (on its own behalf and as agent for any assignee of its invoices) have a general and particular lien on subject Containers (and any associated documentation or records) as security for payment of all sums (whether due or not) claimed by PLCS from, or invoiced to the Owner on any account relating to the subject Containers or not, or otherwise claimed in respect of the Containers or other property of the Owner. Storage shall be charged for any goods detained under lien.

12. **Force majeure**

PLCS shall be relieved of its obligations to the extent that its performance is prevented or delayed by, or non-performance results wholly or partly from, the act or omission of the Owner or its agent (including any breach by the Owner of these Terms and Conditions) or by storm, flood, fire, explosion, civil disturbance, governmental or quasi-governmental action, breakdown or unavailability of premises, equipment or labour, or other cause beyond the reasonable control of PLCS.

13. **Limitation of Liability**

- 13.1 PLCS does not insure the Containers and the Owner shall self-insure or make arrangements to cover its Containers against all insurable risks to their full insurable value (including all duties and taxes) with any right for the insurer to bring a subrogated claim against the PLCS being excluded.
- 13.2 Save in relation to PLCS's own negligence, or wilful act or default of PLCS its employees or agents, and subject always to clause 13.3, PLCS excludes all liability for loss or damage to property and Containers however arising including without limitation loss, theft, destruction, damage, unavailability, contamination, deterioration, delay, on-delivery, mis-delivery, unauthorised delivery, non-compliance with instructions or obligations, or incorrect advice or information.
- 13.3 In case of any loss or damage to Containers or property arising in respect of the Services (including any defective repair or fabrication) PLCS will be entitled to limit its liability in all circumstances to a maximum of two times the value of the Charges.
- 13.4 PLCS shall in no circumstances have any liability for loss or damage to the contents of a laden Container which is the subject of the Services.
- 13.5 No liability shall attach to PLCS in respect of any loss or damage which arises due to the natural consequences and exposures due to outside storage, including but not limited to loss or damage caused by storm or bad weather, or in relation to the location of the Repair Facility and any stacking arrangements made by PLCS.
- 13.6 Services or Additional Services shall be deemed to have been carried out satisfactorily: (i) in relation to Container repairs or servicing, if no written notice to the contrary has been received by PLCS within 7 days of the Container being returned to Line Stock, and (ii) in relation to repairs to vessel or vessel equipment, upon the vessel's representative signing PLCS's work sheet confirming satisfactory completion of Services.
- 13.7 PLCS shall in any case be freed and discharged from any liability, and claims for loss or damage shall be absolutely barred unless written notice of any claim is received within 7 days of completion of the Services and proceedings are commenced and served within 6 months of the completion of the Services.
- 13.8 For the avoidance of doubt PLCS's liability shall be limited to physical loss or damage to Containers or property, and PLCS shall have no liability whatsoever for indirect or consequential losses, including but not limited to claims for loss of profit, loss or market, or claims for indemnity for third party loss or damage.

13.9 The Owner will hold harmless and indemnify PLCS in respect of all proceedings and claims howsoever arising and by whomsoever brought in respect of the liabilities referred to herein so far as the amounts so claimed are outside the exclusions or limits prescribed in this clause 13.

14. **Indemnity**

The Owner shall be responsible for and provide against all risks and contingencies including death or personal injury of any person or damage to any property whatsoever arising from the use of or the presence of its Containers in the Repair Facility and will indemnify PLCS from against all proceedings and claims by third parties and expenses incidental thereto (including legal costs on a full indemnity basis) arising out of such use or presence or of any inherent quality or defect of the Containers, including but not limited to any leakage, seepage, contamination or pollution caused thereby.

15. **Protection of Servants and Agents**

The employees servants and agents of PLCS shall be entitled to the benefit of all provisions herein which exclude or restrict liability of any kind. PLCS in undertaking the Services does so on its own behalf and as agent for all its employees servants and agents.

16. **Relationship to Special Agreements**

These Terms and Conditions are supplemental to any Special Agreement made between PLCS and the Owner and any other party relating to the Services except insofar as is expressly excluded thereby or inconsistent therewith.

17. **Data Protection**

17.1 PLCS may collect and process information relating to the Owner in accordance with the privacy notice which is available on the Peel Ports Group website. Each party agrees to comply with their respective obligations under the Data Protection Legislation.

18. **Variation of Conditions**

The foregoing conditions may be altered or varied at any time and from time to time in such respects and in such manner as PLCS may consider desirable.

19. **Notices**

All notices, notifications or other operational enquiries shall be addressed to PLCS in writing as follows:

Business Development Department
Port of Liverpool Container Services
c/o The Mersey Docks and Harbour Company Limited
Maritime Centre
Port of Liverpool
Liverpool
L21 1LA

19. **Jurisdiction**

All claims arising in respect of the Services shall be determined in accordance with English law before the courts of England and Wales to the exclusion of the jurisdiction of the courts of any other country.

OPERATIONAL ENQUIRIES:

0151 949 6422 + 6910

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The Mersey Docks and Harbour Company Limited
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